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September 27, 2016

Marlene Dortch, Esq.
Secretary
Federal Communications Commission
445 12th St. S.W.
Washington, D.C. 20554

Dear Ms. Dortch:

RE: Applications of Nexstar Broadcasting Group, Inc. and Media General, Inc. For Consent to the Transfer of Control and Assignment of Licenses, MB Docket No. 16-57; Application of Nexstar Broadcasting, Inc. and BCBL License Subsidiary, LLC For Consent to Assignment of License for Station KADN-TV, Lafayette, LA, BALCDT-20160603AAJ, *et al.*

Appended hereto are the Reply Comments of the Multicultural Media, Telecom and Internet Council (MMTC) in this proceeding. MMTC is replying to the September 22, 2016 Letter of BCBL License Subsidiary, LLC ("Bayou City Broadcasting") and to the September 27, 2016 Letter of Marquee Broadcasting Colorado, Inc. ("Marquee Broadcasting"), regarding the pending request for waiver of the closing date restriction ("Waiver Request") filed by Nexstar Broadcasting Group, Inc. ("Nexstar") and Media General, Inc. ("Media General"). MMTC's Reply Comments are focused on the regulatory policy issue of closing date restrictions and do not address the merits of specific applications or adjudications. MMTC notes that a grant of the requested waiver will not have any impact on the issues raised in the pending petitions to deny the merger applications, apart from causing those issues – which have been fully briefed by the parties – to be addressed more expeditiously.

Sincerely,

David Honig

David Honig
President Emeritus and Senior Advisor,
Minority Media, Telecom and Internet Council, and
President, MMTC Media and Telecom Brokers

Attachment

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

Applications of Nexstar Broadcasting Group, Inc. and Media General, Inc)	MB Docket No. 16-57
For Consent to the Transfer of Control and Assignment of Licenses)	
)	
Application of Nexstar Broadcasting, Inc. and BCBL License Subsidiary, LLC)	BALCDT-20160603AAJ
For Consent to Assignment of License for Station KADN-TV, Lafayette, LA)	
)	
Application of Nexstar Broadcasting, Inc. and BCBL License Subsidiary, LLC)	BAL-20160603AAK
For Consent to Assignment of License for Station KLAF-LD, Lafayette, LA)	
)	
Application of Nexstar Broadcasting, Inc. and Marquee Broadcasting Colorado, Inc.)	BALCDT-20160517AAD
For Consent to Assignment of License for Station KREG-TV, Glenwood Springs, CO)	

REPLY COMMENTS ON CLOSING DATE WAIVER REQUEST

The Multicultural Media, Telecom and Internet Council (“MMTC”) respectfully concurs with the Comments filed this date by BCBL License Subsidiary, LLC (“Bayou City Broadcasting”) and by Marquee Broadcasting Colorado, Inc. (“Marquee Broadcasting”) regarding the pending request for waiver of the closing date restriction (“Waiver Request”) filed by Nexstar Broadcasting Group, Inc. (“Nexstar”) and Media General, Inc. (“Media General”).¹

¹ See Nexstar and Media General, Supplement to Request for Waiver, MB Docket No. 16-57 (filed September 20, 2016) (supplementing their February 10, 2016 request that the FCC waive Sections 1.2204(b) and (d)(3) of its rules to allow them to consummate their proposed merger and related transactions prior to the conclusion of the broadcast television spectrum incentive auction). These Reply Comments by MMTC are focused on the regulatory policy issue of closing date restrictions and are not intended as a statement regarding the merits of specific

MMTC's Interest in the Proceeding

MMTC is a national nonprofit organization dedicated to promoting and preserving equal opportunity and civil rights in the mass media, telecommunications, and broadband industries, and to closing the digital divide. Since 1997, MMTC has operated the nation's only minority-owned (and only non-profit) media brokerage, MMTC Media & Telecom Brokers. As discussed *infra*, in March 2016 Nexstar and Media General engaged MMTC Media & Telecom Brokers, teamed with Wells Fargo Securities, to market thirteen television stations for sale to a wide spectrum of potential buyers, including minorities and women. Since MMTC's brokerage opened its doors in 1997, it has participated in broadcast transactions valued in excess of \$2.0B and has helped arrange approximately one-third of all sales of stations to minorities. These Comments are based on MMTC's deep experience with minority broadcast entrepreneurship and financing.

Summary

Bayou City Broadcasting and Marquee Broadcasting each have filed in support of a waiver of Sections 1.2204(b) and (d)(3) of the Commission's rules to allow closing of the Nexstar/Media General merger and the related spinoff transactions.²

applications or adjudications. MMTC notes that a grant of the requested waiver will not have any impact on the other issues raised in the pending petitions to deny the merger applications, apart from causing those issues – which have been fully briefed by the parties – to be addressed more expeditiously.

² See Waiver Request, *supra* note 1; Letter from DuJuan McCoy, President and CEO, Bayou City Broadcasting, re: Nexstar Media General Merger Waiver Request (filed September 22, 2016), p. 1 ("McCoy Letter"); Marquee Broadcasting Colorado, Inc. Comments in Support of Formal Request for Waiver (filed September 27, 2016), p. 1 ("Marquee Comments").

MMTC believes that a grant of the requested waiver will serve the public interest by, in particular, promptly clearing the way for the assignment of two stations to African American-owned Bayou City Broadcasting, and the assignment of one station to woman-owned Marquee Broadcasting. This result will not only increase the level of minority and women ownership in television broadcasting, but will also send a powerful message to the investor community, and to minority and women entrepreneurs, that the Commission is deeply committed to incentivizing companies like Nexstar and Media General to take steps to facilitate ownership diversity in broadcasting.

The Impact of the Requested Waiver on Minority and Women Ownership

Nexstar and Media General have committed to divest thirteen television stations in order to ensure compliance with the Commission's local and national television ownership rules. In connection with these divestitures – and demonstrating their strong commitment to promote diverse ownership of broadcast television stations – Nexstar and Media General engaged MMTC Media & Telecom Brokers to help market the stations identified for divestiture to minorities, women, universities, and religious institutions. To that end, MMTC reached out to eighty potential buyers and worked closely with several potential buyers and their investors as they pursued due diligence and formulated bids.

As we pursued our brokering assignment, we found that many investors and entrepreneurs were concerned about the disadvantages and risks that flow from the interminable and indeterminate wait in pre-closing purgatory facing a buyer while the incentive auction is underway. Such a buyer must escrow, or pledge and then encumber, capital that then becomes unavailable for other purposes, such as other acquisitions, capital expenditures, and operating

expenses including unusual ones related to such things as election year news coverage in the inherently unpredictable broadcasting sales cycle.

Further, a buyer awaiting the conclusion of the incentive auction must be ready to close on short notice. At a minimum, such a buyer generally must pay “ticking fees” to a bank rather than purchase a short-term note. These ticking fees increase at least monthly, and sometimes daily, from the date on which a bank commits funds. The financial impact of a delayed closing might be a rounding error to a large public company, but for small companies it can be quite significant, especially if it is spread out over a period of months or more. As Bayou points out:

[W]hen capital is raised and committed, additional fees begin accumulating (ticking fees) that increase daily from the day funds were committed (June 2016). Thus, prolonged delays effectively change the financials for the transaction. For a small minority broadcaster like BCB my resources are very limited compared to larger broadcasters. This increase in financial cost could be devastating in the short and long-term for me.³

Drawing from our experience with the Nexstar/Media General brokering assignment, we have concluded that there are three ways in which the possibility of any indeterminately delayed closing disadvantages minorities and women who wish to enter into broadcast transactions.

First, a delayed closing can discourage a potential buyer from pursuing a transaction at all. In the process MMTC helped manage for Nexstar and Media General, many potential minority and women buyers did not bid, or aborted the bidding process, due to concerns about tying up their capital for an indeterminate period of time. The incentive auction-related uncertainty over when the transactions could close made long term financial planning difficult, especially for smaller new entrants and for investors that were new to broadcasting. The

³ McCoy Letter, p. 2.

Chairman’s understandable need to seek another \$11 million in funding from Congress in case the Incentive Auction extends until mid-2017⁴ was particularly worrisome to some of the potential buyers and their investors, at least in part because of previous statements suggesting that the auction could be completed in 2016.⁵ MMTC believes that Nexstar and Media General would have been even more successful in their efforts to enhance ownership diversity in television broadcasting through the required divestitures were it not for the prohibition on closing the merger and related transactions until after conclusion of the incentive auction.

Second, a delayed closing can reduce a minority or woman new entrant’s chance of prevailing against well-financed incumbents in a private auction such as the one we helped manage for Nexstar and Media General. Sophisticated bidders – both new entrants and incumbents – will all generally value the assets at approximately the same price point. However, a bidder’s concern about having to pay large carrying costs can require it to bid less for a station,

⁴ Statement of Chairman Tom Wheeler, Federal Communications Commission, Hearing on the FCC’s Fiscal Year 2017 Budget Request, before the Subcommittee on Financial Services and General Government Committee on Appropriations, U.S. Senate (Apr. 5, 2016), *available at* <http://www.appropriations.senate.gov/download/040516-fcc-chairman-wheeler> (last visited Aug. 22, 2016).

⁵ See, e.g., *Broadcast Incentive Auction Scheduled to Begin on March 29, 2016; Procedures for Competitive Bidding in Auction No. 1000, Including Initial Clearing Target Determination, Qualifying to Bid, and Bidding in Auctions 1001 (Reverse) and 1002 (Forward)*, Public Notice, 30 FCC Rcd. 8975, 8977 ¶ 1, 9033 ¶ 109, 9042 ¶ 133 (2015). Bayou’s CEO DuJuan McCoy states that “[w]hen creating my financial models used to evaluate, and raise capital for, this transaction” he relied “on statements by the FCC regarding the auction that suggested it could be completed in a matter of months.” That now “appears extremely unlikely”, and the resulting uncertainty “makes it almost impossible to estimate when this transaction could close absent a waiver. As a small, minority broadcaster, this uncertainty has dire financial consequences.” McCoy Letter, p. 2.

with the result being that, all other things being equal, a larger, better-financed company usually wins out over a minority- or woman-owned new entrant.

Third, the obligation to pay significant sums in ticking fees over an extended period of time has a negative financial impact on minority and women purchasers that only increases as the delay before closing extends. Although there is every expectation that the Bayou City Broadcasting and Marquee Broadcasting transactions will close, nothing is certain. As Bayou City states,

Any extended delay in closing this transaction **could have extreme negative financial consequences** for me and my company and could perhaps create insurmountable obstacles that could jeopardize my ability to close this transaction and or financially operate the properties after closing based on our original financial assumptions.⁶

Moreover, even assuming that Bayou City Broadcasting and Marquee Broadcasting fulfill their commitments, they will suffer both short-term and long-term financial consequences. In the short-term, they will be unable to pursue other potential transactions. In the long-term, they will have less capital available to operate the stations they are acquiring, and may have greater difficulty securing the financing necessary to allow them to purchase additional broadcast stations in the future. As Bayou explains, “this delay and uncertainty forces me to forego other potential transactions, and could impact my ability to obtain financing for future purchases.”⁷ Marquee also points out that once it filed the assignment application, it was necessary to take several steps, “including entering into affiliation agreements, procuring equipment, and entering into other contractual relationships that are required for the transition of ownership” that “have

⁶ McCoy Letter, p. 1 (emphasis in original).

⁷ Bayou Comments, p. 2.

necessitated the expenditure of funds and good will” such that “[t]he delay is adding unnecessary uncertainty with other parties which could harm the future plans for the station.”⁸

Grant of the Waiver Request is therefore necessary to place the minority and women buyers on better financial footings as they take over the operations of the stations being acquired. Favorable action on the Waiver Request would also send a powerful message to the investor community, and to minority and women entrepreneurs, that the agency seeks to encourage companies like Nexstar and Media General to voluntarily take steps to promote ownership diversity. Such a signal would be particularly impactful where, as here, many of the successful and unsuccessful bidders, their investors, and their lenders, are relatively new to the industry and will be more likely to want to engage in future broadcast transactions if they perceive the regulatory climate as welcoming and flexible.

Grant of the requested waiver is also consistent with the Commission’s longstanding embrace of initiatives that would advance minority and women ownership, including those involving adjustments to the FCC’s “clock” for processing transactions. For example, in its 1978 *Minority Ownership Policy Statement*, the Commission agreed to afford expedited treatment to sales of stations to minorities.⁹ In other cases, the Commission has allowed parties a longer period of time to divest properties in connection with mergers where they committed to seek out minority and women buyers, recognizing that in some cases a divesting party may not be able to

⁸ Marquee Comments, p. 2.

⁹ See *Statement of Policy on Minority Ownership of Broadcast Facilities*, 68 FCC 2d 979, 983 (1978).

identify such buyers as expeditiously as MMTC and Wells Fargo did here.¹⁰ And the Commission has recognized, in general, the public interest in “encourag[ing] companies undertaking major transactions to assist small businesses, including those owned by minority and women entrepreneurs interested in purchasing divested properties,”¹¹ just as Nexstar and Media General have done in this case.

Conclusion

Given the significant benefits that will result from a grant of the requested waiver and the absence of any public interest harms, MMTC respectfully submits that the Commission should permit the merger and spinoff transactions, if they are approved on the merits, to close prior to the conclusion of the incentive auction. As demonstrated in the Comments of Bayou City Broadcasting and Marquee Broadcasting, the Commission should move forward to expeditiously grant the Waiver Request and to resolve all other outstanding matters related to the merger.

¹⁰ See, e.g., *Viacom, Inc.*, 9 FCC Rcd 1577, 1579 (1994) (permitting Viacom a longer period of time to divest two stations given Viacom’s pledge to “undertake an affirmative action effort to increase the possibility of purchase of one or both of the stations by a minority-controlled entity” and the FCC’s finding that it would “be impossible for [Viacom] to administer [its proposal] were [the Commission] to require an immediate divestiture”); see also *Promoting Diversification of Ownership in the Broadcast Services*, 23 FCC Rcd 5922, 5943–44 (2008) (agreeing to favorably “consider requests to extend divestiture deadlines in mergers in which applicants have actively solicited bids for divested properties from eligible entities.”).

¹¹ *Id.*

Respectfully submitted,

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